

Molokini Shoal Marine Life Conservation District Commercial Use Permit FAQs

The following questions have been asked by commercial operators with respect to the revised terms and conditions for the 2009-2011 Molokini Shoal MLCD Commercial Use Permit. Staff answers have been provided below for your convenience. Please direct any further questions to Russell Sparks, Division of Aquatic Resources, at (808)243-5294, or via email to Russell.T.Sparks@hawaii.gov.

1. Q: May I insert my company's name/logo onto the provided copy of Attachment B, Pre-Trip Passenger Briefing?

A: The Pre-Trip Passenger Briefing is intended to be an official government document, and operators are asked not to alter its form. However, the one-page briefing may be photocopied onto the back of a liability waiver or other corporate form distributed to passengers, provided that the briefing is not otherwise altered.

2. Q: Can my company translate Attachment B, Pre-Trip Passenger Briefing, into a different language (such as Japanese) so that my passengers can understand what they are signing?

A: Your company may provide a written translation of Attachment B, Pre-Trip Passenger Briefing, to enable your passengers to understand the document. Such a translation must be a true and accurate representation of the contents of Attachment B. To ensure that passengers understand they are signing a government document, each written translation you distribute to your passengers must be attached to an unaltered copy of Attachment B.

3. Q: Can passengers traveling in groups sign on a single copy of Attachment B, Pre-Trip Passenger Briefing?

A: Passengers traveling in groups may sign on the same copy of Attachment B. Alternatively, in the interest of conserving paper, it is acceptable to reuse unsigned copies of Attachment B, and have multiple passengers acknowledge, on a separate sheet of paper, that they have read and will comply with the rules and guidelines. Acceptable sample language for the separate sheet may state: "The undersigned individuals certify that they have read and will comply with the rules and guidelines contained in the Division of Aquatic Resources' Pre-Trip Briefing and Acknowledgement Form, provided on _____[date]."

To conserve space, briefing forms and signatures may be filed electronically.

Children under six years of age do not have to sign.

4. Q: Must repeat customers traveling to Molokini on multiple trips sign a copy of Attachment B every time they go out?

A: No. Repeat customers only need to sign a copy of Attachment B once for each operator, per year. However, it will be up to the operators to show that each customer they take out to the MLCD has signed a copy of the Attachment B briefing within a year of the last trip.

5. Q: How can I download and submit the monthly Mandatory Molokini Use Log (Attachment C)?

A: The Mandatory Molokini Use Log form can be obtained by visiting http://hawaii.gov/dlnr/dar/licenses_permits.html on or after Friday, January 22, 2010. Instructions for submitting the log will be included on the downloadable form. The mandatory reporting requirement will take effect on February 1, 2010.

6. Q: Will my monthly passenger count information (Attachment C, Mandatory Molokini Use Log) be subject to public disclosure laws?

A: Unfortunately, no one can give a before-the-fact guarantee that any information we receive can be legally kept confidential. Whether or not a given item of information is exempt from public disclosure is something that is determined on a case-by-case basis. The department will refrain from releasing businesses' individualized passenger count information. If we are sued for such information, we will inform the affected commercial operators. At that point, it will be up to the operators to take action to defend the confidential nature of the requested information. This will likely mean showing in court that releasing the information would cause actual and substantial harm to your business' competitive position. Alternatively, if your business chooses not to step in to defend its interests, we may have to release the information pursuant to public disclosure law.

7. Q: If I sell my business, can/will my permit be transferred to the new business owner?

A: Molokini MLCD commercial use permits may be transferred along with the transfer of a commercial use permit or registration only pursuant to HAR 13-231-62. HAR 13-231-62 provides that permits issued to individuals are non-transferable, while permits issued to corporations may be transferred along with the sale of all or part of a corporation provided certain requirements are met. These requirements include showing that the corporation has been in continuous business for at least one year, that it remains eligible for the issuance of a permit, that the corporation has given proper notice of the transfer, that it has paid the appropriate transfer fee, etc.

Note that a transfer will also require submittal of a completed Attachment D Notice of Transfer and Change Form. Please contact the Division of Boating and Ocean Recreation for more information regarding the permit transferability procedure and requirements

8. Q: Condition 21 requires my vessel to display a white marine flag with my permit number in 5-inch lettering at all times while within the Molokini MLCD. In

addition to the required permit number, can I include my company's logo or any other distinguishing feature on the flag?

A: To ensure visibility, the required white marine flags must contain only the permit number in black lettering as described. No company logos, insignia, or any other feature may be placed on the marine flag.

9: Q: Can I use a triangular or "pennant" type flag to satisfy the white marine flag requirement in Condition 21?

A: A pennant or triangular flag may be used, so long as the flag is at least 18 inches long and 12 inches tall. The required permit number must be 5 inches tall and clearly visible regardless of flag shape.

10. Q: Some of my repeat customers come in groups larger than seven, and would like to conduct dives together. Is there a way that I can conduct dives with greater than seven people, provided that they are all Basic Open Water certified?

A: Yes, permit terms and conditions only impose dive ratio requirements to certified and uncertified dive groups. For certified diving, this ratio is seven divers to every one dive master. Thus, a group of up to fourteen Basic Open Water certified divers may be taken in a single dive, so long as two dive masters are supervising the group.